156 FERC ¶ 61,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Belle Fourche Pipeline Company Docket No. IS16-572-000

ORDER ACCEPTING TARIFF FILING

(Issued July 22, 2016)

1. On June 22, 2016, Belle Fourche Pipeline Company (Belle Fourche) filed FERC Tariff No. 128.0.0 (Joint Tariff), a proportional and joint tariff between Belle Fourche, Bridger Pipeline LLC (Bridger) and Black Hills Trucking (Black Hills) (collectively, the Joint Carriers). As discussed below, Belle Fourche's filing is accepted effective July 22, 2016.

Background

2. The Joint Tariff provides for transportation of crude petroleum by truck and by pipeline from designated zones based on geographic areas from which barrels can be sourced for transportation.[1] The joint rates are available to any shipper that (i) has its barrels trucked from the applicable zones identified in the tariff via Black Hills to the applicable Bridger or Belle Fourche receipt points specified in the tariffs, for further transportation service to Guernsey Station or Reno Station in Wyoming, (ii) has an effective agreement under which Black Hills will provide trucking service, and (iii) ships a minimum of 12,500 barrels per day on average and in aggregate, during the applicable month to Guernsey Station or Reno Station.[2] Belle Fourche states that the Joint Tariff will be available to any shipper that meets the above-stated requirements.[3] Belle Fourche

[1] Transmittal Letter at 1.

[2] *Id.*

[3] *Id.* at 2.

also states that the rates set forth in the Joint Tariff are less than the sum of the underlying local base rates applicable to the same movements.[4]

3. Belle Fourche also requests a waiver under Section 6(3) of the Interstate Commerce Act (ICA)[5] to file the Joint Tariff on eight days' notice, instead of the normal thirty days' notice, so that it may become effective on July 1, 2016.[6] Belle Fourche argues that it has good cause, as granting the waiver will allow shippers that qualify for the joint rates to begin shipping under the Joint Tariff as soon as possible.[7]

Protests and Answer

4. On July 7, 2016, Bridger Logistics, LLC (Bridger Logistics) filed a motion to intervene and protest of the Joint Tariff.[8] Bridger Logistics, through certain subsidiaries, is a marketer, gatherer, and trucking transporter of crude oil in North Dakota.[9] Bridger Logistics argues that the Commission should reject the Joint Tariff for not complying with the Commission's regulations for establishing initial rates as set forth in 18 C.F.R. § 342.2 (2015).[10] Bridger Logistics also claims that the Joint Tariff is unduly discriminatory and preferential, and potentially unreasonable and excessive.[11] Bridger Logistics also claims that the Joint Tariff could result in improper cross-subsidization between pipeline and trucking services.[12] Bridger Logistics requests that if the Joint Tariff is not rejected, that it be accepted and suspended for the full statutory period of seven months, and the matter be set for a full investigation and hearing.[13]

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[4] *Id*.

[5] 49 U.S.C. App. § 6(3) (1988).

[6] Transmittal Letter at 2.

[7] *Id*.

[8] Motion to Intervene and Protest of Bridger Logistics, LLC, filed July 7, 2016 (Protest). Bridger Logistics is not affiliated with Bridger Pipeline.

[9] *Id*. at 4.

[10] *Id*. at 6.

[11] *Id*. at 7.

[12] *Id*. at 9.

[13] *Id*. at 13.

5. On July 8, 2016, ConocoPhillips Company (ConocoPhillips) filed a motion for leave to intervene out of time. ConocoPhillips states that it is a past, present and future shipper on the Belle Fourche pipeline system. ConocoPhillips claims that its delay in intervening was due to an administrative oversight during a holiday week.

6. On July 12, 2016, Belle Fourche filed a response to Bridger Logistics' Protest.[14] In the response, Belle Fourche argues that Bridger Logistics lacks standing to protest the Joint Tariff.[15] Belle Fourche also argues that the Joint Tariff does not establish an initial rate for new service, but instead applies to an existing service under the Commission's regulations.[16] Further, Belle Fourche states that Bridger Logistics improperly evaluated the justness and reasonableness of a joint rate under the applicable Commission precedent.[17] Belle Fourche argues that the Joint Tariff is not unduly discriminatory and does not lead to improper cross-subsidization between trucking and pipeline services.[18] Belle Fourche also disputes Bridger Logistics' claims that the Joint Tariff between jurisdictional and non-jurisdictional entities is potentially unlawful.[19]

7. On July 15, 2016, Bridger Logistics sought leave to file a response to Belle Fourche's Response.[20] Bridger Logistics defends its claim that it has standing to protest the Joint Tariff.[21] Bridger Logistics also continues its argument that the rates set forth in the Joint Tariff qualify as an initial rate for new service.[22] Bridger Logistics further maintains that the Joint Tariff is discriminatory.[23] Bridger Logistics also states that Belle

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[14] Joint Response of Belle Fourche Pipeline Company, Bridger Pipeline LLC, and Black Hills Trucking, Inc. to Protest of Bridger Logistics, LLC, filed July 12, 2016 (Response).

[15] *Id*. at 4-12.

[16] *Id*. at 12-15.

[17] *Id*. at 15-18.

[18] *Id*. at 18-21.

[19] *Id*. at 22-23.

[20] Motion for Leave to Respond and Response of Bridger Logistics, LLC, filed July 15, 2016 (Bridger Logistics' Response).

[21] *Id*. at 2-4.

[22] *Id*. at 4-8.

[23] *Id*. at 8-10.

Fourche's filing improperly omitted necessary information regarding Black Hills' local trucking rates and a copy of the agreement between potential shippers and Black Hills that is a necessary condition for accepting shipments under the Joint Tariff.[24] Bridger Logistics maintains its request that the Joint Tariff be rejected, or suspended for the full statutory period and set for a full investigative hearing.

8. On July 18, 2016, Belle Fourche filed a reply to Bridger Logistics' Response.[25] Belle Fourche argues that Bridger Logistics erroneously conflates the standards for establishing joint rates with those for establishing initial rates.[26] Belle Fourche also argues that though it attached an affidavit to its Response, it was not attempting to justify the Joint Tariff as an initial rate.[27] Finally, Belle Fourche states there is a significant typographical error in Bridger Logistics' Response, identifying a shipper as an "affiliated" shipper when it should have read "unaffiliated" shipper expressed interest in joint trucking and pipeline service.[28]

Discussion

9. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2015), all unopposed and timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted. The Commission will accept Bridger Logistics' Response and the Belle Fourche Reply as these pleadings facilitated the decisional process and aided in the explication of issues.[29]

10. The Joint Tariff sets forth a joint rate for movements utilizing the Joint Carriers. Carriers on a through route[30] may establish a joint rate, where shippers pay a specified

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[24] *Id*. at 10-14.

[25] Joint Motion for Leave to Reply and Reply of Belle Fourche Pipeline Company, Bridger Pipeline LLC, and Black Hills Trucking, Inc. to Motion for Leave to Response and Response of Bridger Logistics, LLC, filed July 18, 2016 (Belle Fourche Reply).

[26] Belle Fourche Reply at 2.

[27] *Id*. at 3-4.

[28] *Id*. at 4.

[29] *See Transcontinental Gas Pipe Line Corp.*, 68 FERC ¶ 61,338, at 62,354 (1994).

[30] A through route is an arrangement, express or implied, that provides for the continuous movement of product over the facilities of two or more carriers. *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 778 (D.C. Cir. 2006).

rate for the shipment over the route and the revenue is divided among the carriers according to an agreed formula.[31] Absent a joint rate, shippers pay local rates applicable to each segment of the through route.[32]

11. Joint rates, such as those proposed in the Joint Tariff, constitute a discount from the sum of the individual local rates, which are established under the provisions of the ICA.[33] This discount is based on a voluntary agreement among the carriers that none of the carriers are obliged to continue once their agreement ends.[34]

12. The Commission accepts the Joint Tariff. As detailed below, Bridger Logistics lacks standing to protest the Joint Tariff. While finding that Bridger Logistics lacks standing, the Commission has examined the substantive issues raised in the Protest and finds that the Joint Tariff does not require rejection or an evidentiary hearing. The Joint Tariff does not propose an initial rate for a new service, but a new joint rate for the combined use of existing services with existing FERC tariffs. The rates set forth in the Joint Tariff follow Commission precedent and the requirements of the ICA and are therefore just and reasonable, not unduly discriminatory, and do not result in improper cross-subsidization of jurisdictional service. The Commission also finds that the potential anti-competitive ramifications of accepting the Joint Tariff, as raised by Bridger Logistics, involve antitrust matters that are beyond the Commission's jurisdiction. Finally, the Commission will deny Belle Fourche's request for a waiver of Section 6(3), as good cause has not been established.

Whether Bridger Logistics Has Standing to Protest the Joint Tariff

Position of the Parties

13. Belle Fourche states that Bridger Logistics lacks standing to protest the Joint Tariff. Belle Fourche argues that neither Bridger Logistics nor any of its affiliates have ever been shippers on either Belle Fourche or Bridger in the several years of their operations, and therefore lack a substantial economic interest in the Joint Tariff.[35] Belle Fourche argues that contrary to cases involving new services, where the Commission has been less rigid when determining whether a potential shipper has demonstrated

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[31] *Id*. at 778.

[32] *Id*.

[33] *Express Pipeline LLC*, 99 FERC ¶ 61,229, at P 10 (2002) (*Express*).

[34] *Id*.

[35] Response at 5.

substantial economic interest, the pipeline movements covered by the Joint Tariff are existing services that have been offered for several years.[36] Given that the service has existed for several years under local tariffs, argues Belle Fourche, Bridger Logistics' arguments that it could be a potential shipper should be given little weight.

14. Belle Fourche also argues that granting standing to Bridger Logistics would "heavily undermine, if not entirely eradicate, the standing requirement."[37] Belle Fourche states that granting standing to potential parties such as Bridger Logistics would unreasonably burden both the Commission and responding pipelines.[38] Belle Fourche states that neither the Commission nor the pipelines should be required to commit resources necessary for a full evidentiary hearing because a competitor may become less profitable as a result of the implementation of a discounted joint rate.[39]

15. Bridger Logistics states that it has in the past provided, presently provides, or in the future will provide crude oil trucking services in the area served by the Joint Carriers, and provides trucking transportation services to clients who are shippers on the Belle Fourche or Bridger.[40] Bridger Logistics also claims that it is a potential future shipper and "may in the future be asked to act as shippers of record on behalf of current or future clients for transportation on Belle Fourche or Bridger."[41]

16. Bridger Logistics explains that the economic harm it faces if the Joint Tariff is accepted is that the joint rate is significantly lower than the sum of the local rates, and that under the Joint Tariff the pipelines are "cross-subsidizing" the trucking service

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[36] *Id*. at 7. Belle Fourche states that movements from the Bridger points identified in the Joint Tariff have been in service for approximately five years, while the Belle Fourche receipt point identified in the Joint Tariff has been in service for approximately three years. *Id*.

[37] *Id*. at 11.

[38] *Id*.

[39] *Id*.

[40] Protest at 4.

[41] *Id*.

provided by Black Hills.[42] Bridger Logistics argues that due to the lower joint rate it will lose trucking customers to Black Hills.[43]

17. Bridger Logistics' Response states that because the Joint Tariff represents a new service, cases such as *Enbridge Pipelines (Southern Lights)* support its argument on standing.[44] Bridger Logistics argues that whether it has or has not shipped on the underlying local tariffs is not relevant, because even if the underlying local tariffs have been on file for some time, the clock in effect resets when a new service, namely the joint rate, is first offered.[45]

Commission Determination

18. The Commission finds that Bridger Logistics lacks standing to protest the Joint Tariff. Only persons with a substantial economic interest in the tariff may file a protest to a tariff filing pursuant to the ICA.[46] The substantial economic interest standard assures that parties protesting a filing have a sufficient interest in the matter to warrant the commitment of agency and pipeline resources to a review of the merits.[47] The key factor in determining standing is the magnitude of the economic stake of the person seeking standing to challenge a proposed rate.[48] Standing in oil pipeline proceedings "is based on all the facts and circumstances of the particular proceeding."[49]

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[42] *Id*. at 5-6.

[43] *Id*. at 6.

[44] Bridger Logistics' Response at 3.

[45] Bridger Logistics' Response at 3.

[46] 18 C.F.R. § 343.2(a) (2015). *See also Shell Pipeline Co. LP*, 148 FERC ¶ 61,208, at P 11 (2014) (*Shell Pipeline II*).

[47] *Shell Pipeline Co. LP*, 104 FERC ¶ 61,021, at P 6 (2003) (*Shell Pipeline I*).

[48] *Shell Pipeline II*, 148 FERC ¶ 61,208 at P 18, citing *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,964 (1993), *aff'd*, *Assoc. of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

[49] *Shell Pipeline II*, 148 FERC ¶ 61,208 at P 30, quoting *Enbridge Pipelines (Southern Lights) LLC*, 134 FERC ¶ 61,067, at P 11 (2011).

19. Bridger Logistics lacks standing because it is not a shipper on the Joint Carriers, has expressed no definitive intent to ship on the Joint Carriers, and has not made a valid transportation request to the Joint Carriers.[50] While the Commission has held that there is no requirement that a future shipper's plan to ship must be imminent in order to demonstrate standing,[51] the facts in this case differ significantly from *Enbridge Pipelines (Southern Lights)*. The tariff at issue in *Enbridge Pipelines (Southern Lights)* was for a new service in existence less than one year.[52] A more analogous case is *Shell Pipeline*.[53] In *Shell Pipeline*, the Commission denied standing to a shipper who had not shipped under the tariffs at issue during the two years proceeding the tariff filing.[54] The underlying local tariffs of the Joint Tariff have been in effect even longer than those in *Shell Pipeline*.

20. Bridger Logistics is neither a current shipper nor has it demonstrated any likelihood that it will be a future shipper under either the Joint Tariff or the associated local tariffs. It is not enough that shifts in business needs over time may result in Bridger Logistics potentially becoming a shipper in the future.[55] Economic harm as alleged by Bridger Logistics is insufficient to demonstrate a substantial economic interest in the Joint Tariff.[56]

21. Despite finding that Bridger Logistics lacks standing to protest the Joint Tariff, the Commission has examined the substantive arguments raised in the Protest. The Commission, as discussed below, finds that even if standing were granted to Bridger Logistics, the arguments raised are insufficient for the Commission to reject the Joint Tariff, or suspend the Joint Tariff subject to a full evidentiary hearing.

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[50] *See Western Refining Pipeline Co.*, 122 FERC ¶ 61,210, at P 13 (2008).

[51] *Enbridge Pipelines (Southern Lights)*, 134 FERC ¶ 61,067, at PP 10-11.

[52] *Id*. PP 1-3.

[53] *Shell Pipeline I*, 104 FERC ¶ 61,021.

[54] *Id*. P 2.

[55] *Shell Pipeline Co. LP*, 148 FERC ¶ 61,208 at P 31.

[56] *See Buckeye Linden Pipe Line Co. LLC*, 147 FERC ¶ 61,249, at P 11 (2014) (Tariff rate's impact on terminal owner's customers insufficient to create a substantial economic interest for the terminal owner). *See also Tri-States NGL Pipeline, L.L.C.*, 94 FERC ¶ 61,087, at 61,382 (2001) (while gas processor has some financial interest in transportation rates paid by customers, its interest is insufficient to confer standing).

Whether the Joint Tariff Contains Initial Rates for New Service

Position of the Parties

22. Bridger Logistics argues that the Joint Tariff constitutes an initial rate under the Commission's Regulations.[57] Bridger Logistics states that because the Joint Tariff creates three new "origin points" based not on existing pipeline origin points but the locations where trucking service will begin, this is a new service.[58] Bridger Logistics argues that because Belle Fourche failed to meet the Commission's requirements for establishing an initial rate for new service, the Joint Tariff should be rejected.[59]

23. Belle Fourche argues that the Joint Tariff does not involve initial rates for a new service, but relates to existing services.[60] Belle Fourche states that Commission regulations concerning the establishment of initial rates are irrelevant to the establishment of joint rates.[61] Belle Fourche states that it provided sufficient information for the Commission to determine the justness and reasonableness of the Joint Tariff.[62]

Commission Determination

24. The Commission finds that the Joint Tariff does not set forth initial rates for new service. A joint rate is not an initial rate for new service when, as here, the underlying local rates and services have been offered prior to the filing of the joint rate.[63] As the local rates underlying the Joint Tariff existed prior to the filing of the Joint Tariff, the joint rate is in fact reviewed under Commission regulations pertaining to changes to an existing rate. Furthermore, a joint rate is not based on a cost-of-service.[64] Rather, as discussed below, the justness and reasonableness of a joint rate is based on a

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[57] Protest at 6.

[58] Bridger Logistics' Response at 5, citing *Texaco Refining and Marketing Inc., et al. v. SFPP, L.P., et al.*, 103 FERC ¶ 63,055, at PP 47-50 (2003).

[59] Protest at 7.

[60] Response at 12.

[61] *Id*.

[62] *Id*. at 13.

[63] *United Gas Pipe Line Co.*, 24 FPC 113, 115 (1960).

[64] *Big West Oil Co. v. Frontier Pipeline Co.*, 106 FERC ¶ 61,171, at P 13 (2004).

determination of whether it is equal to or less than the sum of the local rates of the participating carriers that are on file with the Commission.

25. The current procedures for establishing an initial rate were set forth in Order No. 561,[65] and embodied in the Commission's Regulations. Bridger Logistics is correct that under the Commission's Regulations, a carrier must justify an initial rate for new service by (a) filing cost, revenue, and throughput data supporting such rate, or (b) filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question.[66] If a protest is filed against an initial rate that is justified by an affidavit, the carrier must provide cost, revenue, and throughput data.[67]

26. Changes to existing rates however, such as the joint rates set forth in the Joint Tariff, are treated differently under section 342.3 of the Commission's Regulations. A carrier may change an existing rate at any time to a level that does not exceed the ceiling level of that rate.[68] To institute such a change, a carrier must identify the rate to be changed, the proposed new rate, the prior rate, the prior ceiling level, and the applicable ceiling level for the movement.[69] Whereas a protest to an initial rate triggers a requirement to file cost data, a protest filed against a rate proposed or established under section 342.3 must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable.[70]

27. It has long been Commission policy to characterize joint rates as a change to existing rates, and not an initial rate, when the underlying local rates are already on file with the Commission. In *Texaco Pipeline Inc.*,[71] the pipeline proposed a joint, discounted rate encompassing several existing local tariffs. In a protest against the joint tariff, the protesting party argued that the tariff should be rejected for failing to meet the

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[65] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985 (1993), *aff'd*, *Assoc. of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

[66] 18 C.F.R. § 342.2 (2015).

[67] 18 C.F.R. § 342.2(b) (2015).

[68] 18 C.F.R. § 342.3(a) (2015).

[69] 18 C.F.R. § 342.3(b) (2015).

[70] 18 C.F.R. § 343.2(c) (2015).

[71] 72 FERC ¶ 61,313 (1995) (*Texaco*).

requirements for establishing initial rates for a new service pursuant to section 342.2 of the Commission's Regulations.[72] In approving the proposed joint tariff, the Commission did not characterize the joint rate as an initial rate for new service under section 342.2, but as a rate change pursuant to section 342.3(a) of the Commission's Regulations.[73]

28. In *Texaco*, the Commission interpreted section 342.3(a) to mean, in the context of a joint rate proposal, that "the ceiling level for a joint rate is the sum of the ceiling levels associated with individual tariff rates currently on file."[74] The Commission approved the proposed joint rate because it was "below the combination of actual index ceiling levels made up of the individual tariff rates currently on file."[75] Bridger Logistics acknowledges that *Texaco* did not involve initial rates for new service, stating that the case involved the establishment of a joint rate composed "exclusively from tariff rates and origin points already on file with the Commission."[76]

29. While a joint rate itself may be a "new" rate, it is not an "initial rate for new service" when the underlying local services are not new. The Commission has consistently held that while the overall rates may differ between joint rates and the underlying local rates, the service provided is the same. In *Express*,[77] the Commission held that the cancellation of a joint tariff did not violate the public interest where "service will continue to be available under the local rates of the individual carriers."[78] As the Joint Tariff is comprised of existing local services, Belle Fourche need not provide cost, revenue, and throughput data supporting the joint rate.

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[72] Protest; Motion for Rejection; and Motion for Intervention of Sinclair Oil Corp., Docket No. IS95-36-000, filed Sept. 8, 1995. One day prior to the issuance of the Commission Order, Sinclair withdrew its filing. The Order makes no reference to this withdrawal, and addresses the arguments raised in the Protest.

[73] *Texaco*, 72 FERC at 62,310-311.

[74] *Id*. at 62,310.

[75] *Id*. at 62,311.

[76] Bridger Logistics' Response at 7.

[77] 99 FERC ¶ 61,229.

[78] *Express*, 99 FERC ¶ 61,229 at P 8, *cited in All American Pipeline, L.P.*, 100 FERC ¶ 61,266, at P 14 (2002). The ICA provides the Commission the authority to establish joint rates if it is necessary or desirable in the public interest. 49 U.S.C. App. § 15(3) (1988).

30. The Commission has in prior cases reviewed proposed joint rates containing local rates not on file with the Commission. As Belle Fourche states, in both *Texaco*[79] and *Big West*[80] at least one of the local rates was not on file with the Commission when the proposed joint tariff was filed.[81] In such instances the Commission did not, contrary to Bridger Logistics' argument, find that the absence of such rates on file resulted in the creation of new origin points and, subsequently, the joint rate becoming an initial rate for a new service.

Whether the Joint Rate is Just and Reasonable

Position of the Parties

31. Bridger Logistics argues that the Joint Tariff may be unreasonable, excessive, and possibly unlawful.[82] Bridger Logistics argues that because there is no tariff on file for the trucking portion of the Joint Tariff, the Commission cannot determine whether the joint rate is less than the sum of the underlying local rates.[83] Bridger Logistics states that the absence of Black Hill's local rates, and the absence of a copy of the agreement between potential shippers and Black Hills, prevents the Commission from determining the justness and reasonableness of the Joint Tariff.[84] Bridger Logistics also argues that any joint rate between jurisdictional and non-jurisdictional entities may be unlawful, and that the Joint Tariff fails to identify which portion of the rates is attributable to the pipelines and which to trucking.[85] Bridger Logistics argues that because Belle Fourche does not break down the joint rate to indicate which part of the rate is attributable to trucking versus pipeline service, Belle Fourche may be engaging in undue discrimination by offering discounted pipeline service to some shippers while denying it to others.[86]

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[79] *Texaco*, 72 FERC ¶ 61,313 at 62,311.

[80] *Big West Oil Co. v. Frontier*, 94 FERC ¶ 61,339, at 62,259 (2001).

[81] Response at 14.

[82] Protest at 7-8.

[83] *Id*. at 7.

[84] Bridger Logistics' Response at 10.

[85] Protest at 9.

[86] *Id*. at 11.

32. Bridger Logistics argues in its Response that its protest is also against the underlying local rates of Belle Fourche and Bridger.[87] Bridger Logistics states that not only is the Joint Tariff an initial rate for new service requiring cost justification, but that both Belle Fourche and Bridger are substantially over-recovering their costs on their respective local segments of the Joint Tariff, based on those pipelines' Page 700s. Bridger Logistics argues that the Commission should therefore examine the justness and reasonableness of the joint rates even if the rates are less than the sum of the local rates.[88]

33. Belle Fourche states that it is not relevant that a tariff for the local trucking rate on Black Hills is not on file with the Commission.[89] Belle Fourche argues that the Joint Tariff is just and reasonable because the sum of the local rates applicable to the pipeline transportation services alone (all of which are on file with the Commission) are greater than the highest joint rate set forth in the Joint Tariff.[90] Belle Fourche also states that Bridger Logistics has never requested the Black Hills trucking rate, and therefore its argument as to the unavailability of that rate is without merit.[91]

34. Belle Fourche states that there is no requirement that a joint tariff must specify what portion of the joint rate relates to each part of the movement.[92] Belle Fourche also argues that the Commission has consistently held that the division of revenues under a joint rate is within the discretion of the participating carriers.[93]

Commission Determination

35. Under the ICA, it is unlawful for a carrier to charge any greater compensation as a through rate (*i.e.*, joint rate) than the aggregate of the intermediate (*i.e.*, local) rates.[94] In

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[87] Bridger Logistics' Response at 7.

[88] *Id*.

[89] *Id*. at 13-14.

[90] *Id*. at 14, citing *Big West*, 94 FERC ¶ at 62,259, *Texaco*, 72 FERC ¶ 61,313.

[91] Response at 15.

[92] *Id*. at 17.

[93] *Id*. (citing *Big West*, 94 FERC ¶ 61,339 ("the matter of apportionment of revenues collected for transportation provided under a joint rate is the exclusive business of the participating carriers.")).

[94] 49 U.S.C. App. § 4(1) (1988), *cited in Frontier Pipeline*, 452 F.3d at 784.

Texaco, the Commission first set forth the policy that it would approve a proposed joint rate that was "below the combination of actual index ceiling levels made up of the individual tariff rates currently on file."[95] In subsequent cases, the Commission clarified its joint rate policy, stating that "a joint rate is just and reasonable if it is less than or equal to the sum of the individual tariff rates for that movement currently on file with the Commission."[96] The justness and reasonableness of a joint rate is therefore satisfied if it is less than or equal to the underlying local rates on file, regardless of whether those rates are set at the applicable ceiling level or at a point below that level.[97]

36. The joint rate set forth in the Joint Tariff satisfies the Commission's policy concerning the justness and reasonableness of joint rates. The joint rate is less than the sum of the underlying local rates on file with the Commission. Even without the applicable trucking rates on file, Belle Fourche established that the joint rate was below the sum of the two pipeline local rates on file with the Commission.[98]

37. Bridger Logistics' argument that the trucking rate must be on file before the Commission can determine the justness and reasonableness of the Joint Tariff is contrary to Commission precedent. In *Texaco*, one of the local rates under the proposed joint rate was not on file with the Commission.[99] The Commission found this inconsequential, as the total ceiling levels of the remaining tariffs that were on file with the Commission exceeded the proposed joint rate.[100]

38. The Commission does not require parties to a joint tariff to break out the joint rate by its component parts. The reasonableness of a joint rate is to be assessed as a whole rather than simply by reference to one of its segments (or, more generally, to fewer than

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[95] *Texaco*, 72 FERC at 62,311. In *Texaco*, the filed rate equaled the applicable ceiling rate, so no distinction was drawn for whether the rate on file or the applicable ceiling rate was the appropriate rate to utilize when examining the justness and reasonableness of the joint rate.

[96] *Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249, at P 5 (2007); *see also Frontier Pipeline*, 452 F.3d at 785.

[97] *Frontier Pipeline*, 452 F.3d at 785.

[98] Response at 13.

[99] *Texaco*, 72 FERC at 62,311.

[100] *Id*.

all of its segments).[101] The shipper's only interest is that the charge shall be reasonable as a whole.[102] The reasonableness of a joint rate under Section 1(5) of the ICA must be determined based on the whole joint rate rather than upon consideration of the reasonableness of fewer than all of the joint rate's segments.[103]

39. Finally, Bridger Logistics' challenge to the underlying local rates of Belle Fourche and Bridger must be pursued by means of a complaint, as there is no argument that these are not existing rates. The justness and reasonableness of the Joint Tariff is measured against the sum of the underlying local rates currently on file with the Commission.[104] Bridger Logistics argues that the Commission's decision in *Big West* stands for the proposition that even when a joint rate is less than the sum of the local rates, the Commission can still find the joint rate unjust and unreasonable if the local rates are found to be unjust and unreasonable.[105] However, *Big West* was a complaint against existing local rates.[106] Bridger Logistics' reliance on *Big West* in regard to a protest proceeding is misplaced.

Whether the Joint Tariff Results in Undue Discrimination

Position of the Parties

40. Bridger Logistics alleges that by providing the discounted joint rate only to shippers that utilize the Black Hills portion of the movement, Belle Fourche is discriminating against shippers that do not choose to use Black Hills.[107] Bridger Logistics argues that shippers using only the pipeline portion of the Joint Tariff are

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[101] *Frontier Pipeline Co. v. FERC*, 452 F.3d at 782, citing *Louisville & Nashville Railroad Co. v. Sloss-Sheffield Steel & Iron Co.*, 269 U.S. 217 (1925); *see also Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249 at P 14.

[102] *Great Northern Railway Co. v. Sullivan*, 294 U.S. 458, 463 (1935), *quoted in Frontier Pipeline*, 452 F.3d at 782.

[103] *Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249 at P 22.

[104] *Id*. P 20.

[105] Bridger Response at 6-7 (citing *Big West*, 94 FERC ¶ 61,339).

[106] *Big West*, 94 FERC at 62,259. The Commission affirmed on rehearing that the complaints involved only the local rates, not the joint rate directly. *Big West Oil Co. v. Frontier Pipeline Co.*, 95 FERC ¶ 61,281, 61,986 (2001).

[107] Protest at 11.

"similarly situated" to shippers who take service from the Joint Carriers, including trucking service from Black Hills.[108] Thus, argues Bridger Logistics, shippers using only the pipelines should receive the discounted rate available under the Joint Tariff. Bridger Logistics also argues that the Joint Tariff is discriminatory because it provides a discount without utilizing the Commission's well-established discounting policy.[109]

41. Belle Fourche states that, under the Joint Tariff, all shippers are treated equally, without undue preference or discrimination.[110] Belle Fourche also states that the requirement in the Joint Tariff that a shipper ship a minimum of 12,500 barrels per day is sufficient consideration for providing a discounted joint rate.[111]

Commission Determination

42. The Commission finds that the Joint Tariff is not unduly discriminatory or preferential. Under the Joint Tariff, all shippers that seek to use the service are treated equally.[112] Bridger Logistics' argument that the failure to provide discounted local rates makes the joint rate unduly discriminatory is without merit. Shippers taking service under certain local tariffs are not similarly-situated to shippers using all of the local services comprising the Joint Tariff.[113] Acceptance of Bridger Logistics' argument would render many if not all current joint rates unduly discriminatory, as joint rates by their nature only are available to shippers using the entire through route.

43. Bridger Logistics is also incorrect in stating that the Joint Tariff violates the Commission's policy on discounted rates. Joint rates provide discounts only under certain circumstances, such as when the carriers agree to offer a discount to encourage increased throughput.[114] Shippers seeking transportation service under the Joint Tariff must agree to ship a minimum of 12,500 barrels per day, on average and in the aggregate,

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[108] Bridger Logistics' Response at 9-10.

[109] *Id*. at 8-9, citing *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219, at 61,866 (2002) (Plantation).

[110] Response at 19.

[111] *Id*. at 20.

[112] *Id*. at 19.

[113] *See generally Enbridge (U.S.) Inc. and ExxonMobil Pipeline Co.*, 124 FERC ¶ 61,199 (2008).

[114] *Express*, 99 FERC ¶ 61,229 at P 10.

during the applicable month to the destination points identified in the Joint Tariff.[115] The Joint Tariff satisfies the Commission's policy on discounted rates.

44. Bridger Logistics' reliance on *Plantation* is misplaced. In *Plantation*, the pipeline proposed to offer joint rates that were less than the sum of the local rates, and an additional incentive discount yielding rates below the joint rate.[116] The Commission re-affirmed its policy that a joint rate is just and reasonable if it is less than or equal to the sum of the ceiling levels associated with the individual interstate rates currently on file with the Commission.[117] The Commission's analysis of discounted rates involved a rate below the joint rate available in exchange for certain volume commitments.[118] The discount set forth in the Joint Tariff, also in exchange for a volume commitment, is consistent with Commission policy.

Whether the Joint Tariff Supports Anti-Competitive Behavior

Position of the Parties

45. Bridger Logistics argues that the Joint Tariff "involves an attempt to corner the trucking transportation market in large swathes of North Dakota."[119] Belle Fourche states that the Joint Tariff has not caused Bridger Logistics any economic harm.[120]

Commission Determination

46. The Commission does not adjudicate or enforce antitrust laws.[121] The Commission's role in considering anticompetitive conduct turns on a showing that the alleged conduct is materially furthered by the transactions subject to the Commission's regulatory jurisdiction.[122] The alleged harm raised by Bridger Logistics concerns potential anti-competitive impacts in the crude oil trucking market. Bridger Logistics has

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[115] Response at 2.

[116] *Plantation*, 98 FERC at 61,866.

[117] *Id*.

[118] *Id*.

[119] Protest at 12.

[120] Response at 9.

[121] *Gulf States Utilities Co. v. FPC*, 55 FPC 1784, 1802 (1976).

[122] *Id*.

not alleged that the Joint Tariff would cause any anti-competitive impacts in the oil pipeline transportation market. Further, even in the absence of the Joint Tariff, Belle Fourche and Bridger are not prohibited under the ICA from shifting revenue earned from their local tariff rates (or any other source) to Black Hills in order to subsidize their trucking activities. Accepting the Joint Tariff will not increase the potential for any cross-subsidization between pipeline and trucking entities, and in fact by providing a lower joint rate, the ability to cross-subsidize may decrease. The Commission finds that Bridger Logistics has not demonstrated that the Joint Tariff raises anti-competitive concerns involving oil pipeline transportation.[123] If Bridger Logistics wishes to pursue a cause of action concerning anti-competitive behavior in the trucking market, there are more appropriate venues to pursue such actions.

Whether Waiver of Section 6(3) is Appropriate

47. Belle Fourche requested a waiver under Section 6(3) of the ICA to file the Joint Tariff on eight days' notice, instead of the normal thirty days notice, so that it may become effective on July 1, 2016.[124] Belle Fourche argues that it has good cause, as granting the waiver will allow shippers that qualify for the joint rates to begin shipping under the Joint Tariff as soon as possible.[125]

Commission Determination

48. The Commission denies Belle Fourche's request. While the Commission has in the past granted such waivers when it will allow for transport that otherwise would be unavailable,[126] shippers can access the same transportation service under local tariffs that will be available under the Joint Tariff. Belle Fourche has not demonstrated that an unusual circumstance or emergency situation exists that would warrant a waiver of Section 6(3).[127]

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[123] *See Western Ref. Pipeline Co.*, 122 FERC ¶ 61,210 at P 14.

[124] Transmittal Letter at 2.

[125] *Id*.

[126] *Seaway Crude Pipeline Co., LLC*, 144 FERC ¶ 61,148, at PP 2-3 (2013).

[127] *Chaparral Pipeline Co., LLC*, 152 FERC ¶ 61,068, at PP 5-6 (2015).

The Commission orders:

Belle Fourche's FERC Tariff No. 128.0.0 is accepted, effective July 22, 2016.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.